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Bimbo Bakeries USA, Inc.

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 ALEX ANG and LYNN STREIT,  
individually and on behalf of all others  
14 similarly situated,

15 Plaintiffs,

16 v.

17 BIMBO BAKERIES USA, INC. ,

18 Defendant.  
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Case No. 13 Civ. 1196 (EMC)

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION TO DISMISS  
AMENDED COMPLAINT**

1 Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant Bimbo Bakeries USA,  
2 Inc., ("BBUSA") hereby requests that the Court take judicial notice of the attached exhibits,  
3 which are true and correct copies of the following:

4 Exhibit 1: Package for Sara Lee 100% Whole Wheat bread (1 lb. 4 oz.);

5 Exhibit 2: Photographs of the front and back of Exhibit 1 and artwork for the label  
6 provided by the manufacturer;  
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8 Exhibit 3: Package for Sara Lee 100% Whole Wheat bread (20 oz.);

9 Exhibit 4: Photographs of the front and back of Exhibit 3 and artwork for the label  
10 provided by the manufacturer;

11 Exhibit 5: Package for Sara Lee Classic 100% Whole Wheat bread (1 lb. 4 oz.);

12 Exhibit 6: Photographs of the front and back of Exhibit 5 and artwork for the label  
13 provided by the manufacturer;  
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15 Exhibit 7: Package for Sara Lee Classic 100% Whole Wheat bread (16 oz.);

16 Exhibit 8: Photographs of the front and back of Exhibit 7 and artwork for the label  
17 provided by the manufacturer;

18 Exhibit 9: Package for Sara Lee Soft and Smooth 100% Whole Wheat bread (1 lb. 4 oz.);

19 Exhibit 10: Photographs of the front and back of Exhibit 9 and artwork for the label  
20 provided by the manufacturer;  
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22 Exhibit 11: Package for Sara Lee Soft and Smooth 100% Whole Wheat bread (20 oz.);

23 Exhibit 12: Photographs of the front and back of Exhibit 11 and artwork for the label  
24 provided by the manufacturer;

25 Exhibit 13: Package for Thomas' Bagel Thins Plain (1 lb. 10 oz.);

26 Exhibit 14: Photographs of the front and back of Exhibit 13 and artwork for the label  
27 provided by the manufacturer;  
28

1        Exhibit 15: Package for Thomas' Bagel Thins Plain (2 lbs. 7 oz.);

2        Exhibit 16: Photographs of the front and back of Exhibit 15 and artwork for the label  
3 provided by the manufacturer;

4        Exhibit 17: Package for Thomas' Bagel Thins Plain (13 oz.) (THUS05-1345-30-06);

5        Exhibit 18: Photographs of the front and back of Exhibit 17 and artwork for the label  
6 provided by the manufacturer;

7        Exhibit 19: Package for Thomas' Bagel Thins Plain (13 oz.) (THUS05-1345-30-05);

8        Exhibit 20: Photographs of the front and back of Exhibit 19 and artwork for the label  
9 provided by the manufacturer;

10       Exhibit 21: Package for Bimbo Toasted Bread;

11       Exhibit 22: Photographs of the front and back of Exhibit 21 and artwork for the label  
12 provided by the manufacturer;

13       Exhibit 23: Photographs of the front and back of the Entenmann's Soft'ees Family Pack  
14 and artwork for the label provided by the manufacturer;

15       Exhibit 24: Letter dated April 5, 2013 from Mark C. Goodman to Ben F. Pierce Gore;

16       Exhibit 25: Joint Stipulation re Time to File Amended Complaint and Time to Respond  
17 Thereto and Request to Set Modified Briefing Schedule, dated April 19, 2013, *Ang, et al. v.*  
18 *Bimbo Bakeries USA, Inc.*, Case No. 13-civ-01196, Docket No. 13;

19       Exhibit 26: Letter dated April 19, 2013 from Ben F. Pierce Gore to Mark C. Goodman  
20 and Ethan A. Miller;

21       Exhibit 27: Letter dated May 17, 2013 from John C. Lee to Alex Ang and Lynn Streit;

22       Exhibit 28: Materials from the American Heart Association website, available at:  
23 [http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/HeartSmartShopping/Heart-](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/HeartSmartShopping/Heart-Check-Mark_UCM_300133_Article.jsp)  
24 [Check-Mark\\_UCM\\_300133\\_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/HeartSmartShopping/Heart-Check-Mark_UCM_300133_Article.jsp);

1        Exhibit 29: U.S. Food and Drug Administration, *Compliance Policy Guide* § 505.350,  
 2        January 1977, Revised October 1980, Reissued March 1988, available at:  
 3        [http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074423.](http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074423.htm)  
 4        [htm](http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074423.htm);

5        Exhibit 30: Excerpts from U.S. Food and Drug Administration, *Food Labeling: Nutrient*  
 6        *Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient*  
 7        *Content Claims for the Fat, Fatty Acid, Cholesterol Content of Food*, 58 Fed. Reg. 2302 (January  
 8        6, 1993);

9        Exhibit 31: U.S. Food and Drug Administration, *Draft Guidance: Whole Grain label*  
 10        *Statements* (February 17, 2006), available at:  
 11        [http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Label](http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm059088.htm)  
 12        [ingNutrition/ucm059088.htm](http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm059088.htm);

13        Exhibit 32: Excerpts from U.S. Food and Drug Administration, *Food Labeling: General*  
 14        *Requirements for Health Claims for Food*, 58 Fed. Reg. 2478 (January 6, 1993);

15        Exhibit 33: Federal Trade Commission, *Guides for the Use of Environmental Marketing*  
 16        *Claims*, 77 Fed. Reg. 62122 (October 11, 2012).

17        Exhibits 1 through 23, the identified “purchased products” packaging and labels, are  
 18        referred to and thereby incorporated into the complaint. (First Amended Complaint (“FAC”) at  
 19        §§ 46-141). Accordingly, the Court may properly take judicial notice of those materials and  
 20        consider them for purposes of the motion to dismiss the complaint. *See, e.g., Marder v. Lopez*,  
 21        450 F.3d 445, 448 (9<sup>th</sup> Cir. 2006); *No. 84 Employer-teamster Joint Council Pension Trust Fund v.*  
 22        *Am. W. Holding Corp.*, 320 F.3d 920, 925 n.2 (9<sup>th</sup> Cir. 2003).

23        Exhibit 28 contains screenshots of materials available from the website of the American  
 24        Heart Association’s Heart Check program, which are referred to and quoted in the amended  
 25        complaint (*see* FAC at §§ 56-74) and, thus, have been incorporated into the amended complaint.  
 26        Again, such materials are properly judicially noticed and considered for purposes of the motion to  
 27        dismiss. *See, e.g., Marder v. Lopez*, 450 F.3d at 448; *No. 84 Employer-teamster Joint Council*  
 28        *Pension Trust Fund v. Am. W. Holding Corp.*, 320 F.3d at 925 n.2. Additionally, the American

Heart Association Heart Check program website, available at:  
[http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/HeartSmartShopping/Heart-Check-Mark\\_UCM\\_300133\\_Article.jsp](http://www.heart.org/HEARTORG/GettingHealthy/NutritionCenter/HeartSmartShopping/Heart-Check-Mark_UCM_300133_Article.jsp), is an appropriate subject of judicial notice because the American Heart Association is a reputable and respected organization, whose website plaintiffs relied on in filing the amended complaint, and, thus, the website's accuracy cannot be reasonably disputed. *See, e.g., McDaniel v. GEICO Gen. Ins. Co.*, No. 1:12-CV-2028, 2013 WL 1790167, at \*8 (E.D. Cal. Apr. 26, 2013) (taking judicial notice of a private website because its contents were not "subject to reasonable dispute").

Exhibits 29 through 33 are materials issued by the U.S. Food and Drug Administration and U.S. Federal Trade Commission. Such regulatory materials issued by agencies of the government of the United States are appropriate subjects of judicial notice. *See, e.g., Wilson v. Frito-Lay North America, Inc.*, 2013 WL 1320468, at \*4 (N.D. Cal. Apr. 1, 2013) (U.S. Food and Drug Administration materials part of public record and therefore subject to judicial notice); *Peviani v. Hostess Brands*, 750 F. Supp. 2d 1111, 1116 (C.D. Cal. 2010) ("a court may take judicial notice of matters of public record, including duly recorded documents, and court records"); *Ries v. Hornell Brewing Co.*, 2010 WL 2943860, at \*5 n. 3 (N.D. Cal. July 23, 2010) (taking judicial notice of a document on the U.S. Food and Drug Administration's website).

Accordingly, BBUSA respectfully requests that the Court take judicial notice of each of the exhibits submitted with this request.

Dated: June 19, 2013

HOGAN LOVELLS US LLP

By: /s/ Mark C. Goodman

Mark C. Goodman  
 Attorneys for Defendant  
 Bimbo Bakeries USA, Inc.